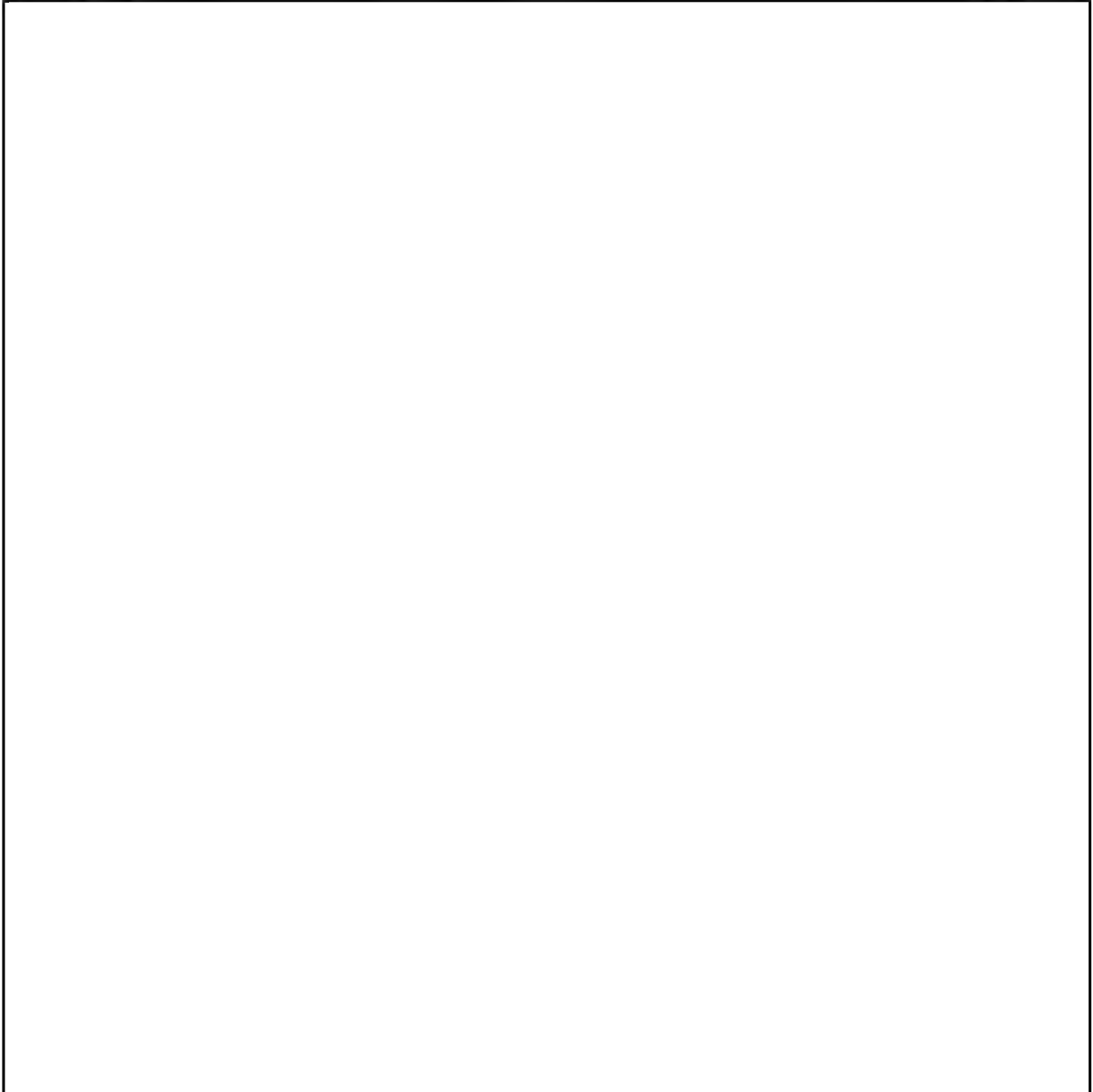


20 JUN 1977



STAT

**DRAFT**

To amend title 5, United States Code, to provide for retention of grade and pay for certain employees, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the  
2 United States of America in Congress assembled, That title 5, United  
3 States Code, is amended as follows:

4 (1) by adding the following new subchapter VII to chapter 53:

5 "SUBCHAPTER VII - GRADE AND PAY RETENTION

6 "§ 5371. Purpose

7 "It is the purpose of this subchapter to provide a system by which  
8 employees who would otherwise be reduced in grade or pay through no  
9 fault of their own may be reasonably protected, but without impeding the  
10 proper classification of positions or the reorganization of functions or  
11 duties in an organization, and to provide for pay retention in certain  
12 other instances.

13 "§ 5372. Definitions; coverage

14 "(a) For the purposes of this subchapter --

15 "(1) 'employee' means an individual who holds a career or  
16 career-conditional appointment in the competitive service or an  
17 appointment of equivalent tenure in the excepted service and who is  
18 covered by or moving to the General Schedule classification and pay  
19 system under chapter 51 of this title and subchapter III of this  
20 chapter or an individual covered by or moving to a prevailing rate  
21 system under subchapter IV of this chapter; and an employee covered  
22 in section 2105(c) of this title.

23 "(2) 'agency', 'position', and 'grade' have the meaning given  
24 by them by sections 5102 and 5342 of this title;

25 "(3) 'personal and confidential' means the grade held by an employee

1 under the provisions of section 5373 of this title; and

2 "(4) 'scheduled rate of pay' means a rate of pay (including a  
3 rate of pay under section 5374 of this title) fixed by law or  
4 administrative action for a position or personal grade held by an  
5 employee, before any deductions and (notwithstanding the provisions  
6 of section 5343(f) of this title) exclusive of a night differential  
7 or any other kind of additional pay.

8 "(b) Except as provided by subsection (c) of this section and section 5375  
9 of this title, the provisions of this subchapter shall apply only to an employee  
10 who has served not less than 52 consecutive weeks at a grade or grades higher  
11 than the grade of the position to which the employee is being assigned or  
12 to which the employee's position is being downgraded when --

13 "(1) the employee's position is being reclassified to a lower  
14 grade in accordance with the provisions of chapter 51 of this  
15 title or section 5346 of this chapter;

16 "(2) the employee is being assigned to a position in a lower  
17 grade as a result of reduction in force;

18 "(3) the employee is being moved to the General Schedule or  
19 to a prevailing rate system as the result of an action described in  
20 paragraphs (1) or (2) of this subsection; or

21 "(4) the employee is being affected by such other situations  
22 as may be identified and determined by the Civil Service Commission  
23 to warrant coverage of the employee in the interest of facilitating  
24 agency accomplishment of mission.

25 "(c) Nothing in this subchapter shall prevent the separation of an

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1 employee under reduction in force or adverse action procedures, or prevent  
2 a reduction in grade or pay for an employee who is reduced --

3 "(1) for personal cause;

4 "(2) at the employee's own request; or

5 "(3) as a condition of a temporary promotion or  
6 assignment to position in a higher grade.

7 "(d) The provisions of this subchapter shall cease to apply to an  
8 employee who --

9 "(1) has a break in service of one workday or more;

10 "(2) is demoted, transferred, or reassigned --

11 "(A) for personal cause; or

12 "(B) at the employee's own request;

13 "(3) becomes entitled to a rate of pay equal to or higher than  
14 that provided by this subchapter by reason of some other provision  
15 of law; or

16 "(4) declines to accept the reasonable offer of a position,  
17 the rate of pay for which is equal to or greater than the rate of  
18 pay provided by this subchapter.

19 "8 5373. Grade retention

20 "(a) When an employee's position is reduced in grade or the employee  
21 is assigned to a position in a lower grade in an action covered by this  
22 subchapter, the employee shall continue to hold the previous grade as a  
23 personal grade and such personal grade shall be the grade of the employee  
24 for determinations of pay, benefits, eligibility for training and promotion,

25 and for ~~Approved For Release 2002/05/16 : CIA-RDP81-00314R000200090049-0~~ Service Commission.

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"(b) The Civil Service Commission shall prescribe regulations to carry out this subchapter. Such regulations may include provision for --

"(1) requiring agencies to undertake retraining, as appropriate, to improve the employees' qualifications, thus enhancing the opportunity for selection for positions which are equal in grade to the personal grade level;

"(2) requiring agencies to give priority consideration for selection for positions for which employees qualify, which are equal in grade to their personal grade or which are above the grade of the position occupied;

"(3) Civil Service Commission monitoring of agency vacancies and requiring agencies to effect placements, including such placements in an agency other than the agency in which the employee is employed; and

"(4) termination of grade retention upon expiration of the period which ends two years from the date of the action which brought the employee under the coverage of this subchapter.

"(c) If the employee has not been reassigned or transferred to a position at the same or higher grade as the employee's personal grade within two years from the date the employee was brought under the provisions of this section, the employee's personal grade shall terminate and the employee shall be placed in the grade of the position occupied at the end of the two-year period and the employee shall be entitled to pay retention under section 5374 of this title.

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1 "8 5374. Pay retention.

2 "(a) An employee who has been covered under section 5373 of this  
3 title, but who has not been reassigned or transferred to a position in  
4 the same or higher grade as the employee's personal grade within two years  
5 of such coverage, shall be entitled to a rate of pay which is not less  
6 than the scheduled rate of pay held by the employee in his personal  
7 grade. If such rate exceeds the maximum rate of the lower grade in  
8 which the employee's position has been placed, such rate shall become  
9 his retained rate, provided that the retained rate may not exceed one  
10 and one-half times such maximum rate. Thereafter, the employee shall  
11 receive one-half of the amount of each subsequent increase in the maximum  
12 rate of the grade to which the employee was reduced until the retained  
13 rate is terminated under section 5372(d) of this title.

14 "(b) The Civil Service Commission is authorized to issue regulations  
15 governing selection of the rate of pay of the employee upon termination  
16 of the personal grade retention period.

17 "8 5375. Pay retention in other situations

18 "The Civil Service Commission may prescribe regulations providing  
19 pay retention benefits as provided under section 5374 of this title for  
20 employees whose pay would otherwise be reduced as a result of:

21 "(1) the movement of employees with their positions from other  
22 Federal pay systems to the General Schedule system or a prevailing  
23 rate system;

24 "(2) the movement of employees from one pay schedule to another  
25 pay schedule within the prevailing rate systems; or

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1           "(3) the reduction or elimination of a special rate of pay  
2       established under section 5303 of this title.

3       § 5376. Adverse actions

4           "No action taken under the provisions of this subchapter, including  
5       assignment and termination of personal grade, reassignment to a position  
6       equal in grade to the employee's personal grade, placement of the employee  
7       in the position occupied upon expiration of the grade retention period,  
8       or receipt of one-half of future general increases in pay upon gaining  
9       entitlement to pay retention, constitutes an adverse action as defined in  
10      section 7511 of this title.

11      "§ 5377. Regulations

12           "Subject to such policies as the President may prescribe, the Civil  
13      Service Commission shall issue regulations necessary for the administration  
14      of this subchapter.";

15           (2) by inserting in the analysis of chapter 53, the following new  
16      subchapter VII:

17           "SUBCHAPTER VII GRADE AND PAY RETENTION

18           "5371.     Purpose

19           "5372.     Definitions; coverage

20           "5373.     Grade retention

21           "5374.     Pay retention

22           "5375.     Pay retention in other situations

23           "5376.     Adverse actions

24           "5377.     Regulations";

1 (4) by striking out "section 5337" each place it occurs in sections  
2 5107, 5334(b), and 8704(d)(1) and in place thereof inserting "subchapter  
3 VII of chapter 53"; and

4 (5) by striking out "section 5345" in section 5349(a) and inserting  
5 in place thereof "subchapter VII of chapter 53" and by striking out  
6 "paragraph (2) of section 5345(a)" and in place thereof inserting "sections  
7 5374 and 5375".

8 Sec. 2. (a) The provisions of this Act are effective on the first  
9 day of the first applicable pay period which begins on or after the  
10 ninetieth day after the date of enactment of this Act.

11 (b) An employee who was receiving a retained rate of pay under the  
12 provisions of sections 5334(d), 5337, or 5345 of title 5, United States  
13 Code, on the day before the date of enactment of this Act shall not have  
14 any retained rate of pay reduced or terminated by reason of this Act.  
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STATEMENT OF PURPOSE AND JUSTIFICATION  
OF  
A Bill to amend title 5, United States  
Code, to provide for grade and pay  
retention for certain employees.

PURPOSE

In the Federal Government, as in other organizations with formalized job evaluation systems, it becomes necessary from time to time to change employees to a lower grade for reasons which are beyond their control and not for personal cause. Downgrades can occur when jobs are recognized as being overgraded because of misclassification, or when, because of consolidation, mission changes, staff reductions or reorganization, affected employees are placed at lower grades. Employees who face downgrading through no fault of their own now receive salary retention protection for a period of two years and are entitled to special consideration for repromotion.

There appears to be increasing support for the idea that employees whose jobs are determined to be overgraded because of poor agency classification practices ought to be permitted to retain those grades so long as they continue to hold their positions, with the positions reverting to proper grades when vacated. Similarly, employees affected by circumstances beyond their control, such as a reduction in force or transfer of function, may be "bumped" into a lower grade position through no fault of their own. The argument has been advanced that in both instances (downgrading due to reclassification or reduction in force caused by any factor) the Federal Government has broken its commitment to its employees by unilaterally reducing a grade attained and accepted in good faith in initial hiring or in a subsequent promotion.

Some Federal agencies are now engaged in very comprehensive classification review programs and based on an initial sampling, they anticipate that many Federal employees will be adversely affected by the results of their review. Additionally, it is strongly believed that employees should be assured that they will not be substantially harmed by the effects of anticipated reorganizations within the Federal Government. It seems clear that decreased employee morale and organizational disruption are the consequences of any threat of large scale employee downgradings.

The major objective of this bill is to improve the protections afforded to Federal employees faced with such downgrading actions. The bill provides for a temporary period of grade retention to the employees (two years), followed by indefinite salary retention, which together with attrition and reinforced efforts under Commission leadership to place employees in jobs commensurate with their grade level, "should help keep the potential adverse impact of classification reviews and reorganization to a minimum. The bill would also bring together under one provision of law, all existing authorities to retain salary in various circumstances.

#### JUSTIFICATION

The draft bill provides that an employee involved in a downgrading action, who has been in grade, or at higher grades, for one year, would retain that grade (hereinafter referred to as "personal grade") for a period of two years and would thereafter be eligible for indefinite pay retention. During the two-year period of grade retention, the personal grade would be the grade of the employee for purposes such as pay setting, allowances and benefits, and determining eligibility for training, promotion, and reassignment as if the employee's position were still at that grade. Should an employee already holding a personal grade be affected by further reductions in force, he would compete according to his position assignment but would continue to hold his personal grade even should assignment to a still lower-graded position be required.

Currently, even though employees demoted due to reclassification or reduction in force are not entitled to retain their grades, they are in most cases eligible for two years' salary retention. However, in certain circumstances, such as reduction in force caused by lack of funds or curtailment of work, employees may be denied even salary retention. This bill would cover all reduction-in-force situations, thus eliminating different treatment which is perceived by some as creating real inequities.

In considering the arguments in favor of grade retention, it is necessary to strike a balance between concern with needs of employees and the interests of the Government as an employer. It is apparent that temporary grade retention followed as necessary by indefinite salary retention accomplishes this objective. Grade retention which is limited to a specific period of time will keep to a minimum any possibility of damage to the integrity of the Government's classification and pay systems. This built-in time limitation (two years) will serve as a self-corrective factor in the system, and as an incentive to managers as well as to downgraded employees to seek placement at their personal grade levels during that period.

It is envisioned that this combination of grade/salary retention would eliminate the basis for many employee appeals and grievances inasmuch as no adverse action is experienced by the employee at the time the position of the employee is reclassified. Following the grade retention period with the added benefit of salary retention for an indefinite period also minimizes the adverse effects on the employee occasioned by the reduction-in-grade action. The proposed legislation takes cognizance of these facts by specifying that neither of these actions constitutes an adverse action.

By eliminating the adverse impact of grade reductions under this greatly improved grade/salary retention program, and thus, the need for adverse action appeals, both employees and agencies will be freed from the burdens associated with those actions, with a hoped-for improvement in morale and productivity.

A classification appeal may be filed by an employee at any time, and this bill does nothing to abrogate that right. Moreover, strengthened agency efforts to place the employee during the two-year period at a position warranting the personal grade, retraining to enhance qualifications, and CSC efforts behind reassignment to a position commensurate with the employee's personal grade should decrease the number of employees significantly, who are actually downgraded at the end of the two-year period.

A major feature of the proposed legislation concerns agency efforts to reassign the employee to a position equal in grade to his personal grade. The bill authorizes the Civil Service Commission to prescribe regulations ensuring that employees receive every consideration for reassignment to positions for which they qualify which are equal in grade to their personal grade. This authority would extend not only to efforts of the agency, but would permit the CSC to develop and implement a program of placement Federal Government-wide, including directing employee placement.

Agencies may be required to provide retraining for employees in an effort to improve their qualifications and thus enhance their employment prospects within their own agencies or with others. The authority granted to the Commission in this respect is general, but it is envisioned that regulations would require the development and administration of training plans by the employing agency under the aegis of the Commission.

Presumably, the employee would be attempting to obtain placement at his personal grade level during the two-year retention period. Should he not be successful, however, and should agency and Commission efforts fail to achieve placement at the personal grade level, the temporary period of grade retention is followed with indefinite salary retention, so that the employee would not suffer any reduction in his existing rate of pay.

Upon assignment to the lower grade of the position occupied, the employee would be entitled to a continuing rate of pay not less than that of his personal grade, unless this rate exceeds one and one-half times the rate of the maximum step of the grade which he will now occupy, in which case, it will be adjusted to that amount. The bill would replace the cumbersome computation now required in actions which involve demotion in excess of three grades. The unwieldy formula currently prescribed for salary retention purposes has long been a source of complaints.

Employees whose rate of pay is above the maximum step of the grade of the position occupied upon termination of the grade retention period will be entitled to receive one-half of all subsequent general increases in pay. Under this plan, an employee's existing rate of pay will not be reduced and his pay will not be frozen; instead, he will continue to receive increases, albeit at a reduced rate during the entire period he is paid a retained rate. This method also provides the means for phasing the employee's retained rate of pay gradually back into the system; eventually, the maximum step of the grade to which the employee has been downgraded will equal or exceed the retained rate of pay, at which time the employee's rate of pay will be adjusted to that rate.

The bill also covers those other situations in which salary retention only is authorized. The movement of an employee with his position to the General Schedule or to a prevailing rate system is an action which occurs through no fault of the employee and pay retention is authorized in situations of this type. The bill stipulates that employees moving between pay schedules of prevailing rate systems and employees whose special rate of pay (established under section 5303 of title 5) has been reduced or eliminated, are eligible for pay retention under regulations to be issued by the Commission. The bill merely repeats benefits to which employees in these situations already are entitled under current regulations. This proposal also stipulates that the entitlements of employees now receiving pay retention would not be reduced or terminated.

It is envisioned that the form of temporary grade retention outlined in the draft legislation, followed by indefinite salary retention, would meet the immediate needs of agencies and would assist in the accomplishment of the forthcoming reorganization plans for the Federal Government.

## SECTION ANALYSIS

To accompany a bill to amend title 5, United States Code, to provide for grade and pay retention of certain employees.

This amendment adds a new subchapter VII to chapter 53 of title 5, United States Code, and includes new sections 5371, 5372, 5373, 5374, 5375, 5376, and 5377.

### SECTION 5371. PURPOSE

This section states the purpose of the amendment: to provide reasonable protections in grade and pay for employees faced with downgrading due to reclassification or reorganization action, and to provide for pay retention in certain other instances.

### SECTION 5372. DEFINITIONS AND COVERAGE

This section contains the definitions of certain terms and delineates its coverage. Subsection (a) contains definitions. Clause (1) defines "employee" as an individual now under the General Schedule, an individual now under a prevailing rate system, or an individual moving to a position under the General Schedule or a position in a prevailing rate system. Clause (2) defines the terms "agency", "position", and "grade" as they have been previously defined under the sections of title 5 pertaining to General Schedule (Section 5102) and prevailing rate (Section 5342) employees. In defining the term "agency," both sections agree that it means "an executive agency" and both exclude from this definition the following:

- a Government controlled corporation
- the Tennessee Valley Authority
- the Alaska Railroad
- the Virgin Islands Corporation
- the Atomic Energy Commission
- the Central Intelligence Agency
- the Panama Canal Company
- the National Security Agency, Department of Defense

Under section 5342, an additional agency is listed as an exclusion, the Bureau of Printing and Engraving (except for the purposes of establishment of pay rates comparable to prevailing rates). Under section 5102, certain other organizations are added to the definition of "agency":

- the Library of Congress
- the Botanic Garden
- the Government Printing Office
- the Office of the Architect of the Capitol, and
- the government of the District of Columbia.

Both sections define "positions" as the work, consisting of the duties and responsibilities, assignable to an employee. Section 5102 defines "grade" as including all classes of positions which, although different with respect to kind of subject-matter of work, are sufficiently equivalent as to the level of difficulty and responsibility and the level of qualification requirements of the work to warrant their inclusion within one range of rates of basic pay in the General Schedule. Section 5342 contains no definition of the term "grade."

Clause 3 defines "personal grade" as the employee's retained higher grade held prior to action which downgraded the position.

Clause 4 defines "scheduled rate of pay" as a rate of pay fixed by law or administrative action for a position or personal grade exclusive of all deductions and additions, including the exclusion of night differential, normally included as a part of basic pay.

Subsection (b) states that provisions of this amendment will apply to employees who have occupied their grade, or higher grades, for at least 52 weeks prior to downgrading caused by reclassification, reduction in force, or movement to a position in the General Schedule or in a prevailing rate system. Subparagraph (4) permits the Civil Service Commission to extend coverage of this subchapter to any other situation identified wherein agency accomplishment of mission would be facilitated.

Subsection (c) indicates that entitlement to grade or pay retention does not preclude an employee being separated by reduction in force or by adverse action. The subsection also states that as an exception to the bill's provisions a reduction in grade or pay can occur when the employee is reduced, for personal cause, at the employee's own request or as a condition of a temporary promotion.

Subsection (d) defines the conditions under which an employee may lose entitlement to application of these provisions: a break in service of one workday or more (separates may not return to employment and retain eligibility for grade or pay retention); demotion, transfer, or reassignment for personal cause or at the employee's own request. Inasmuch as these represent conditions under which an employee may be initially denied grade and pay retention, they constitute bases for denial of their continuation as well. The subsection continues, listing two other valid reasons for discontinuance of these benefits: the employee becomes eligible for a rate of pay equal to or higher than that provided under grade and pay retention provisions (e.g., the position is upgraded, the employee receives a promotion in another field or with another agency) or the employee declines to accept the reasonable offer of a position whose rate of pay equals or exceeds that of his personal grade. It is anticipated that the Civil Service Commission in its regulations will specify that such refusal pertains to an offer only within the employee's agency, unless the CSC determines that a Government-wide placement program will be necessary, in which event the regulations will specify that refusal to accept any such offer will constitute grounds for loss of entitlement to continuing grade or salary retention.

SECTION 5373. KEY PROVISIONS

Section 5373 identifies the key provisions of the grade retention program. Subsection (a) explains the right of the employee to hold his previous grade as a personal grade, which is to be used for purposes such as pay setting, allowances and benefits, and establishing eligibility for training, promotion, and reassignment. Should an employee already holding a personal grade be affected by further reductions in force, he would compete according to his position assignment, but would continue to hold his personal grade even should assignment to a still lower graded position be required.

Subsection (b) empowers the Civil Service Commission to develop, implement, and enforce regulations to carry out the provisions of this subchapter. Although not limited in scope except by the general framework of the concept, such regulations may include the requirement for establishment of retraining programs within agencies for employees when it appears that their qualifications require improvement or broadening in order to achieve placement in positions equal to their personal grade level. This subsection also authorizes the Civil Service Commission to prescribe regulations governing the priority consideration to be given employees possessing personal grade for reassignment or transfer to positions commensurate with their personal grade levels. It is envisioned that the Civil Service Commission would develop and implement a program of enforced placement for these employees.

According to dictates of circumstances, such priority consideration may be restricted to the employee's agency or it may be broadened to include other Federal agencies. The CSC regulations will, however, require absolute priority consideration of employees on personal grades for appropriate vacant positions with documented, approved reasons for non-selection. The Civil Service Commission is authorized to monitor vacancies and if necessary, to direct placement in agencies. Procedures governing the termination of grade retention upon expiration of the authorized period will be provided in detail in CSC regulations.

Subsection (c) explains that if the employee has not attained a grade equal to or higher than his personal grade upon expiration of the two-year retention period, the personal grade shall terminate and the employee shall be placed in the grade of the position then occupied; simultaneously, the employee will be entitled to pay retention under later sections of this subchapter. The "position then occupied" will be the lower-graded position originally determined to be the correct position to which the employee is entitled whether through reclassification or reduction-in-force (reason for reduction-in-force is immaterial).

Section 5374 deals with pay retention, the follow-on action to grade retention. Subsection (a) explains the entitlements generally: an employee who has been eligible for grade retention, but whose period of grade retention has expired, shall be entitled to a rate of pay which is not less than the rate of pay of the position to which he is assigned.

Therefore, an employee with personal grade whose rate of pay may be accommodated within the rate range of the grade of the position to which downgraded will receive the appropriate step. These employees will receive the full amount of any future general increases in pay. For those whose rate of pay exceeds the maximum of the grade to which demoted, their rate of pay is limited to 150% of the top step of the grade to which assigned. Employees whose rate of pay exceeds the maximum step of the grade to which assigned shall be entitled to one-half of all future general increases in pay. In this way, such employees will be gradually phased back into the system; at the point when their pay, which has risen more slowly due to receipt of half-increases, is equalled or exceeded by the maximum step of the grade of the position which they occupy, the employees will be placed in that maximum step.

Subsection (b) authorizes the Civil Service Commission to prescribe regulations governing the selection of the rate of pay of the employee upon termination of the personal grade period. The regulations will deal with such situations in which the employee's rate of pay of the personal grade falls between two steps of the grade to which downgraded and computation of retained rates (those beyond the maximum step of the grade to which demoted).

The above guidance will be expanded in CSC regulations which are authorized by subsection (b).

Section 5375 deals with pay retention in situations other than those following grade retention. It specifies that the Civil Service Commission may prescribe regulations pertaining to pay retention for employees who are converted with their positions to the General Schedule or to a prevailing rate system, who move from one pay schedule to another within the prevailing rate systems, or who have had their special rates of pay reduced or eliminated. These provisions currently exist in law or Executive order.

Section 5376 eliminates the basis for employee adverse action appeals by stating that no action taken under the provisions of this subchapter may be considered an adverse action as defined in section 7511, title 5: "(2) 'adverse action' means a removal, suspension for more than 30 days, furlough without pay, or reduction in rank or pay." While this provision eliminates appeals from adverse actions, it does not abrogate the right of an employee to file a classification appeal at any time.

Section 5377 empowers the Civil Service Commission to issue regulations "necessary for the administration of this subchapter". Although this authorization is contained in other sections in which specific matters were mentioned, this provision is a general authority for the Commission to develop and implement regulations which may be required for unforeseen circumstances.



Paragraph 2 of this bill provides for the insertion of the new subchapter VII in the analysis of chapter 53. Those sections of law (specifically section 5334(d), section 5337, and section 5345) which provide for pay saving are repealed since these provisions of law would be in the new subchapter VII.

In addition, all references to "section 5337" in sections 5107, 5334(b), and 8704(d)(1) are to be replaced by inserting "subchapter VII of chapter 53"; and the reference to "paragraph (2) of section 5345(a)" is to be replaced by inserting "sections 5374 and 5375".

The second section of the bill states that the provisions of the Act are effective on the first day of the first applicable pay period which begins on or after the 90th day after enactment date. It also provides that no employee who is on a retained rate on the day before the date of enactment of the law will suffer a reduction or termination of his retained rate as a result of the passage of the Act.

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